

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

Prince Telecom Holdings Inc.¹

Employer

and

Case No. 2-RC-22988

**Local 1430, International Brotherhood of
Electrical Workers, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition² duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a Hearing Officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record³ in this proceeding, it is found that:

1. The Hearing Officers' rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find that the Prince Telecom Holdings Inc., the Employer herein, is a Delaware corporation with its principal office located at 34 Blevens Drive, Suite 5, New Castle, Delaware, and with a place of business located at 200 South 14th Avenue, Mount Vernon, New York, and is engaged in the residential installation of cable television. During the past twelve month period, which period is representative of its annual operations generally, the Employer in the

¹ The Petition was amended at hearing to reflect the proper name and address of the Employer.

² On May 27, 2005, I ordered that this matter be consolidated with the case in 2-RC-22989, which concerned a petition filed by Local 810, International Brotherhood of Teamsters. Local 810 requested withdrawal of its petition on June 2, 2005. On June 3, 2005, I ordered the severance of the two matters and approved Local 810's withdrawal request.

³ Briefs have been filed by the Petitioner and the Employer and have been duly considered.

course and conduct of its business operations provided services valued in excess of \$50,000 directly to customers located outside the State of New York.

3. The parties stipulated and I find that Local 1430, International Brotherhood of Electrical Workers, AFL-CIO, the Petitioner herein, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) of the Act.

5. Petitioner seeks an election in a unit consisting of all full-time and regular part-time installation and field technicians, employed at the Employer's facility located at 200 South 14th Avenue, Mount Vernon, New York, and excluding all office clerical employees, guards, and supervisors as defined in the Act.

The Employer contends that the petitioned-for unit is not an appropriate unit for collective bargaining and that the only appropriate unit consists of the above-described employee classifications at all four of the Employer's facilities in the New York area. These facilities include the following locations: (1) the petitioned-for facility in Mount Vernon (commonly referred to as the "Bronx facility"); (2) 1081 East 48th Street., Brooklyn, New York (the "Brooklyn facility"); (3) 1595-A Oceana Avenue, Bohemia, New York, (the "Long Island facility"); and (4) 145 Main Street, Nanuet, New York (the Rockland facility").⁴

Employer's Operations

The Employer is engaged nationally in the residential installation of cable television, as well as telephone and data services, pursuant to contracts with companies such as Cablevision, Comcast, and Time Warner. The Employer maintains its corporate office in Delaware and divides its operations into four geographic regions: northwest, central, southeast and northeast. Within the regions, there exist 30 facilities performing work in approximately 48 "systems."⁵ Regions are further divided into areas. The facilities at issue herein are in the New York area of the Employer's northeast region. The Employer's sole account in the New York area is Cablevision.

⁴ The parties stipulated at hearing that there has been no history of collective bargaining between them, and neither party contends that there exists a collective-bargaining agreement covering the employees sought by the Petitioner which would bar the holding of an election.

⁵ A system is a geographical division based on the work done for the contracting cable company.

Corporate Structure and Management Functions

At the national level, the Employer is directed by a chief executive officer, a chief financial officer, and two senior vice presidents. The Employer's northeast and northwest regions are each respectively overseen by two vice presidents; the central and southeast regions are headed by two directors of operations. Area managers oversee areas with regions.

Charles Morris is the vice president of the Employer's northeast region. Desmond Andrews is the New York area manager in charge of the systems that are run from the four New York area facilities. Each system is run by a project manager, who reports directly to Andrews. In addition, each system also has a project supervisor,⁶ who reports to both a project manager and Andrews.

The Employer maintains separate budgets for each of its systems, as well as a budget for the New York area group of systems as a whole. Major equipment purchasing, such as for trucks, is made by corporate-level management.

New York Area Operations

The petitioned-for Bronx facility houses both the Bronx system and the Mamaroneck system, and is located roughly between these two systems. The record testimony reflects that the Brooklyn facility houses the Brooklyn system; the Long Island facility houses the Long Island system and the Rockland facility houses the Rockland system. There is also testimony regarding a developing Nassau system, which works out of the Brooklyn facility.

Andrews estimated that the Bronx and Brooklyn facilities are approximately twelve to fifteen miles apart; the Bronx and Rockland facilities are nineteen to twenty miles apart; the Bronx and Long Island facilities are 43-45 miles apart; the Brooklyn and Long Island facilities are 43 miles apart; the Rockland and Long Island facilities are 52 miles apart; and the Brooklyn and Rockland facilities are 39 miles apart. Andrews further estimated that the driving time between the Bronx and Rockland facilities is approximately 30 minutes; between the Bronx and Long Island facilities 45 minutes; and the Rockland and Long Facilities 45 minutes.

According to Andrews, the Bronx facility employs approximately 48 technicians, 29 of whom work on the Bronx system and 19 on the Mamaroneck system. Each system in the Bronx facility has a separate project manager and supervisor. When reporting to work in the morning, technicians from both systems report to the same room (the "tech room") to receive their work routes for the day.

There are approximately 63 technicians at the Brooklyn facility; 21 technicians at the Rockland facility, and 16 technicians in the Long Island facility. Five

⁶ The record indicates that there is one supervisor per system; except that the Brooklyn facility employs five supervisors. Andrews testified that project supervisors are similar to senior technicians because they are experienced and able to rectify problems in the field. Supervisors generally do repairs, as distinct from the installations performed by technicians. The record testimony also indicates that the terms "project supervisor," "supervisor" and "field supervisor" are used interchangeably.

technicians support the developing Nassau system and are currently assigned to the Brooklyn facility. Andrews testified that all technicians at each location do the same type of work and are equally skilled in the areas of cable, telephone, data, and enhanced wiring.

Andrews stated that he maintains an office at each of the New York facilities except the Rockland facility, and that his responsibilities entail “deal[ing] with all the operations like the assets, budget trackers, safety equipment, trucks and the hiring process” Andrews further testified that he is “present at all [the New York area] locations at least once or twice during the course of the week.”

With regard to the Bronx facility, Andrews stated that “at least once a week [he is] there all day.”⁷ While there, Andrews performs “operational” duties, such as ordering tools and equipment, and scheduling.⁸ Andrews also fields questions from managers and makes himself available to technicians to address “concerns or anything they need to address with [him] directly.”

Andrews also endeavors to attend weekly employee meetings at the Bronx facility. These meetings take place before the technicians leave on their routes. Andrews explained that “all the techs come together with the project manager, the supervisor and [Andrews to] have open communication, steps that we have to follow working for Cablevision, procedures, new policies, new developments.” The meetings also provide “a forum for techs” to bring problems to the attention of management and suggestions to improve management’s support of the technicians.

The Bronx system meeting is held on Thursday and the Mamaroneck system meeting is on Wednesday. However, the day that Andrews spends at the Bronx facility may not coincide with one of the weekly meetings. He testified that in any given week he may attend one, two or none of the system meetings at the Bronx facility.⁹

Andrews also stated that each year the Employer has a Christmas party to which all New York area technicians, as well as other employees and management, are invited.

Human Resources Policies and Functions

The Delaware office houses payroll and human resources personnel, including the Employer’s sole human resources director. Andrews testified that personnel policies are generated from Delaware and applied to all facilities in part by

⁷ In total, Andrews estimated that he allots his time weekly among the facilities as follows: ten to twelve hours in the Bronx facility; ten to twelve hours in Brooklyn facility; eight hours in Long Island facility; and eight hours in Rockland facility.

⁸ The manner in which technicians are assigned work is addressed *infra*.

⁹ The Brooklyn system meeting is held on Thursday; the Long Island system meeting is on Friday; and the Rockland system meeting is on Tuesday. Andrews stated that he tries to attend the Brooklyn meeting twice a month, in light of the conflict presented in attending the Bronx system meeting held on the same day.

means of a personnel handbook.¹⁰ According to Andrews, none of the New York area facilities generates its own personnel policies for use solely at the facility.

Northeast Vice President Morris testified that the Employer offers technicians at the four New York area facilities the same health and life insurance benefits, as well as the same number of holidays and personal days (“choice days”).

Technicians are paid bi-weekly using information gathered from the technician’s end-of-the-day paperwork. The supervisor signs off on the paperwork and forwards it to the project manager, who in turn signs off on it and forwards it to a local administrative assistant. The assistant inputs the information into a database accessed by the Delaware corporate office. Pay sheets are then generated for the technicians to review for accuracy. A technician would bring any inaccuracies to the attention of the project manager. Ultimately, the technician corrects the problem by speaking with the facility’s administrator.

Assignment of Work

As stated above, the Employer’s sole account in the New York area is Cablevision. According to Andrews, the Employer receives work orders from Cablevision, which describe the customer’s location, the task to be performed, and the time frame within which the technician must arrive at the customer’s residence. About 80 to 85 percent of this work is generated the day before installation, with the rest being generated overnight.

Andrews described that the Employer produces a general schedule to Cablevision showing the number of technicians available, days they are available to work and their skill level.¹¹ It is Cablevision’s dispatch area operation manager who assigns a specific work route to a technician based on the technician’s identification number (“tech number.”). The routes are provided to the Employer at the end of every day for use the following day. The following morning, the Employer also receives a report called the “overnight”, which lists the additional work orders generated during the night.

Technicians report to their assigned facility in their own vehicles. After arrival, technicians retrieve their work orders (“job sheets”) from their supervisors. The technicians then depart in the Employer’s work trucks after collecting necessary installation equipment maintained at the Employer’s facilities.¹² Technicians are not required to clock in, but are required to arrive at 7:30 a.m. During the day, technicians may communicate with their supervisors or project managers. For example, Andrews explained that, upon completion of their work orders, technicians

¹⁰ At hearing, the Employer identified through Andrews a document as a portion of a handbook. However, the Employer’s counsel withdrew the exhibit on the record.

¹¹ The schedule also shows the project manager’s request to Cablevision to assign a certain amount of “points” to each technician. Cablevision assigns a point value to each discrete task performed by a technician, and an installation may involve one or several tasks. However, Cablevision determines the points actually accumulated by the technician because Cablevision determines each technician’s route. Nevertheless, as described below, wages are determined by the Employer’s system of pay codes and experience levels.

¹² The Employer also supplies the technicians with uniforms.

must notify their supervisors, who may assign additional work available due to a coworker's illness or vehicle breakdown. At the end of the day, technicians return to the facility to complete paperwork indicating the tasks they performed that day.

If a technician cannot come to work, or needs to leave early, the technician is required to notify his or her project manager or supervisor. The supervisor is then responsible for redistributing the work, or sending the absent technician's route back to Cablevision. Technicians must request time off, and receive approval, from the project manager. With regard to leaves of absence, Andrews stated that such leave may be approved by the project manager and Andrews; that Andrews must "be involved in" decisions to approve leaves of more than two weeks and that Andrews does "not necessarily" have to approve the leave.

Hiring and Wages

Andrews explained the technician hiring process. On occasion, the Employer holds an "open house" at a facility where "mass interviews" are conducted. Andrews describes to the prospects the nature of the Employer's operations. Thereafter, Andrews or the facility's project manager "sits one on one and does interviews for technicians." A technician is hired after the project manager will tell Andrews that he or she "thinks [the applicant] has the skill set and mind set to do the job." At that point, the Employer requires Andrews to review the applicant's driver's abstract, check for criminal history, and send the applicant to get a drug test. If the applicant passes these prerequisites, Andrews approves the hiring.

At the Bronx facility, the Employer pays technicians based on experience level in combination with a wage rate ("price") for particular tasks ("job codes."). A job code performed by a more experienced technician will have a higher price than the same code performed by a less experienced technician. There are five experience levels: level 10 and levels 1 through 4. A technician with no prior experience is in Level 10; technicians with more prior experience are placed in levels 1 through 4; level four is for the most experienced. Starting experience levels are determined by the interviewing manager, or Andrews himself if he has conducted the interview. Andrews approves all starting levels; however, Andrews does not change the interviewing manager's recommendation in those cases where Andrews had not been involved in the interview process. The Employer's vice president determines job code prices.

According to Northeast Vice President Morris, the Bronx, Brooklyn and Long Island systems use the same wage scale. Mamaroneck and Rockland systems use an identical wage scale which is approximately fifteen percent lower for each job code than the wage scale used by the other New York area systems.

Andrews testified that technicians receive a wage rate review six months after hire, twelve months after hire, and annually thereafter. Raises are not automatic and are decided by the project manager after the manager does a performance review. Andrews examines the review, which is eventually signed by both the project manager and Andrews. Andrews testified to having changed some reviews after his

examination, but “not that often.” Andrews further testified that the review must be approved by a district area manager located in the Delaware corporate office.

The Employer trains inexperienced technicians through a New York Area trainer in a centrally-located classroom. New employees also receive on the job training by riding along with technicians in the field.

Discipline and Termination

Andrews described the Employer’s discipline procedure. Upon the first instance of a violation of policy, the supervisor or project manager verbally warns the employee. Upon the second infraction, the supervisor or manager issues the employee a written warning. After the third infraction, the supervisor or manager determines if the problem can be corrected, and whether to suspend the employee. If the supervisor or manager decides to suspend, he or she must inform Andrews, preferably before the suspension is implemented.

Andrews testified that he is “the only person [who] terminates [employees] in the New York area.” To initiate a termination, a supervisor or project manager comes to Andrews with a desire to terminate an employee. Andrews then reviews the discipline paperwork generated by the supervisor or project manager in order to determine if the manager “did the necessary consult on the individual during [the discipline] process for [the employee] to be terminated.” Andrews brings the employee to his office to tell the employee of the termination and the reasons therefor. Andrews also signs the personnel action form documenting the termination.

Andrews described that Cablevision provides a report to the Employer which indicates whether work orders were completed in each system.¹³ If a report shows a technician did not do the work assigned, the Employer conducts its own investigation into the matter, and takes disciplinary action if necessary.

Andrews testified to an instance at the Bronx facility in which the project manager requested that an employee be terminated because of failure to follow procedures and lateness. However, Andrews determined that the manager did not complete the necessary documentation showing that the manager “counseled and cautioned this technician prior to wanting to terminate him.” Consequently, Andrews refused the request to fire the technician. Some time later, the manager gave Andrews proper discipline documentation covering a two-to-three week period. At that time, Andrews “sat with the technician, sat with the manager and terminated” the technician.

Temporary Transfers

Andrews described that Cablevision, through its area operation managers, may request that the Employer provide more manpower for an urgent project, such as a product launch. For these situations, Cablevisions requests that the Employer,

¹³ The Bronx facility receives two separate reports for the Bronx and Mamaroneck systems.

for a discrete period of time, move a certain number of employees from one facility to another. Andrews stated that Cablevision's requests of this type of transfer happen "at least once a month" and on occasion twice a month. Andrews further stated that the duration of the transfer may be from one to four weeks.

To determine who will be temporarily transferred, Andrews asks the technicians for volunteers. Andrews could not recall ever lacking volunteers for a temporary transfer.

During the temporary assignments, the technician arrives at his or her home location, picks up his or her truck, and then drives to the other facility to retrieve the job sheets. The technician also attends the weekly technician meetings at the new facility, and fills out end-of-the-day paperwork at the new facility. Trucks are then returned to the technician's home location. For accounting purposes, technicians are paid by the temporary facility.

The Employer submitted a sample of pay sheets showing temporary transfers from the Bronx facility to the Brooklyn facility; the Brooklyn facility to the Bronx facility; and the Brooklyn facility to the Long Island facility.¹⁴ These records cover three weeks in March 2005 and two weeks on May 2005, which the Employer's vice president Morris testified to be illustrative of a typical three-month period.

It appears from the pay sheets that, during the period from May 1 through May 7, 2005, four Bronx system technicians worked one day at the Brooklyn facility; two Bronx technicians worked two days in Brooklyn; two Bronx technicians worked three days in Brooklyn; and two Bronx technicians worked four days in Brooklyn.

Also during May 2005, four Brooklyn system employees worked two weeks at the Long Island facility; one Brooklyn system employee worked one week in Long Island; one Brooklyn employee worked days in Long Island; and three Brooklyn employees worked one day in Long Island.

During March 2005, it appears that three Brooklyn system technician worked three weeks in the Bronx system; three Brooklyn technicians worked two weeks in the Bronx system; two Brooklyn technicians worked one week in the Bronx system; one Brooklyn system technician worked two partial weeks in the Bronx system; and one Brooklyn system employee worked one day in the Bronx system.

Permanent Transfers

Andrews testified that technicians may request permanent transfers. He stated that the usual reason for permanent transfers would be that a technician may want to improve his or her commute, or prefer the working environment of another facility. Andrews named two technicians (Jeffrey Abdin and Ronald Jones) who had recently transferred permanently from Brooklyn to the Bronx. Andrews could not

¹⁴ The Hearing Officer properly rejected Employer's pay sheets purporting to show temporary transfers from the Brooklyn system to the Nassau system. Employer's witness Andrews testified that it is only Brooklyn-based technicians who are normally assigned to the Nassau system, and it appears from the testimony that the Nassau system was not yet fully in existence. Therefore, evidence that Brooklyn facility technicians may work on the Nassau system does not demonstrate the existence of actual transfers. I also note that these transfers, as the Employer's other temporary transfers, were implemented by recruiting volunteers.

recall any permanent transfers out of the Bronx facility to another facility. However, he testified that, in total, six technicians permanently transferred between facilities within the past year, with “some [going] from Brooklyn to Long Island.”

Analysis

As a general rule, a single-plant unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity. *Cargel, Inc.*, 336 NLRB 1114 (2001); *J&L Plate, Inc.*, 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board considers such factors as: centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999). Furthermore, “the party seeking to overcome the single-site presumption must show that the day-to-day interests of the employees at the sought locations have merged with those employees of the other locations.” *Renzetti’s Market, Inc.*, 238 NLRB 174, 175 (1978).

In determining an appropriate unit where there are multiple facilities in a closely-defined area, the Board considers the community of interests among the employees working at the different locations, including: (1) similarity in employee skills, duties and working conditions; (2) functional integration of the business, including employee interchange; (3) centralized control of management and supervision; (4) geographical separation of facilities; (5) collective-bargaining history and extent of union organization; and (6) employee choice. *Metropolitan Life Insurance Co.*, 156 NLRB 1408 (1966). As stated above, the Board has also found that an Employer’s administrative grouping is not dispositive in determining the appropriate unit. *Sav-On Drugs, Inc.*, 138 NLRB 1032 (1962).

Analyzing the facts here in light of the applicable criteria, I find that the Employer has not rebutted the single-facility presumption. The record reveals that the Employer’s business operations are integrated and administratively centralized at its Delaware corporate office. The testimonial evidence indicates that the Employer’s personnel policies are developed and uniformly disseminated among its facilities by its corporate headquarters. Employee benefits are also uniformly applied. Wage rates, although not uniform among systems, are determined at the corporate level. Payroll is also centralized in Delaware. With regard to other resources and assets, it appears that budgeting and the majority of equipment purchases occur at the non-local level.

However, the Board considers “most relevant” the extent of autonomous supervision at the petitioned-for facility. In other words:

whether or not the employees at the sought [facility]
perform their day-to-day work under the immediate
supervision of one who is involved in rating their
performance and in affecting their job status and who is

personally involved with the daily matters which make up their grievances and routine problems.

Renzetti's Markets, 238 NLRB at 175. See *New Britain Transportation*, *supra* at 397 (“[c]entralized control over personnel and labor relations alone . . . is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations.”) In this regard, the Employer here vests facility-level management with significant supervisory autonomy.

The Employer grants the project manager the decision-making authority to hire technicians based primarily on the project manager’s assessment of the candidate. Whether or not the candidate meets the driving, background and drug testing prerequisites, appears to require only a *pro forma* decision from Andrews. In those situations where a project manager, and not Andrews, was the candidate’s interviewer, the project manager determined the candidate’s experience/wage level, and Andrews did not change that determination when approving the project manager’s determination.¹⁵

After hiring, the project manager has the authority to decide wage increases for technicians based on review of their performance. Andrews recalled, without giving specific examples,¹⁶ having changed technician reviews “not that often” before adding his signature to the manager’s.¹⁷ Furthermore, in order for technicians to be accurately paid, only the supervisor and project manager are responsible for reviewing and approving the documents showing the amount of work technicians performed. Technicians also approach project managers with concerns about errors in payment.

In the area of discipline, the record amply demonstrates that supervisors and project managers have autonomous authority to issue verbal and written warnings to technicians. The testimony further indicates that supervisors or managers in some cases can implement suspensions before notifying Andrews.¹⁸ In any event, although Andrews ultimately informs the technician of the discharge and processes the termination paperwork, Andrews’ role in decision-making is primarily to assure that the supervisor or manager has followed the proper administrative procedures in

¹⁵ See *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980) (manager’s significant involvement in hiring process supports single-unit finding even though ultimate authority in these matters rests with upper management); *Renzetti’s Market*, 238 NLRB at 175 (finding single unit where store manager, among other things, “participates in the interviewing process”).

¹⁶ See *J&L Plate*, 310 NLRB at 429 (to rebut single-facility presumption, employer required to introduce “affirmative evidence establishing lack of autonomy”).

¹⁷ See *Renzetti’s Markets*, 238 NLRB at 175 (goal of single-facility determination is in part to find whether employees are “under the immediate supervision of one who is involved in rating their performance”).

¹⁸ See *General Mills Restaurants, Inc., d/b/a Red Lobster*, 300 NLRB 908, 909 (general manager’s authority to give and memorialize verbal discipline without prior approval is evidence of supervisory autonomy); See also *New Britain*, 330 NLRB at 399 (evidence of dispatchers’ independent handling of even minor discipline, as well as responsibility for carrying out employer’s decision on formal discipline, support finding supervisory autonomy).

documenting the discipline underlying the discharge. The substantive reason for the discipline and discharge comes from facility management.¹⁹

The Employer also gives supervisors and managers authority in scheduling matters. Although Cablevision is largely responsible for determining work routes, supervisors have the authority to assign extra work to technicians in the case of coworker absence, lateness, early departure or emergency. Project managers have the authority to approve time-off requests, and the testimony indicates that project managers may approve a leave of absence of short duration. In the case of absence, lateness or early departure, technicians communicate solely with supervisors and project managers.

Additional factors, which by themselves are not determinative, are insufficient here to rebut the single-unit presumption. There is no evidence of bargaining history between the parties which supports finding either a single- or multi-facility unit. Technicians are uniformly skilled among the Employer's New York area facilities. There is also relatively close geographic proximity among the facilities in the New York area.

There is also some evidence of temporary and permanent transfers between facilities. However, the record testimony reveals that Cablevision's manpower requests were filled through volunteers, and that permanent transfers were made to accommodate technicians' personal requests. There is no evidence in the record of either mandatory temporary or mandatory permanent transfers. The Board has long held that voluntary transfers, as distinct from mandatory transfers at the employer's behest, "are not entitled to much weight in determining the scope of the appropriate unit." *Renzetti's Markets*, 238 NLRB at 176; and also *Red Lobster*, 300 NLRB supra at 911.

Regarding the Employer's argument that its New York area is the only appropriate unit, it has been the Board's policy since its decision in *Sav-On Drugs*, 138 NLRB 1032 (1962), that an employer's administrative grouping is not determinative of a multi-facility unit, but is rather a factor to consider among all the circumstances of the case. *Haag Drug Company, Inc.*, 169 NLRB 877 (1968). Because I have determined that significant facility-level supervisory autonomy supports a single-facility unit presumption, I find it unnecessary to decide whether one of the Employer's administrative subdivisions also constitutes an appropriate unit.

In support of its argument that the transfer of employees and integration of operations warrant finding a New York area-wide unit, the Employer relies on cases which I find distinguishable. In *Trane*, 339 NLRB No. 106 (2003), the Board rejected the single-unit petition in large part because it found (in contrast to the case here) a "complete absence of any separate supervision or other oversight at the" petitioned-for single site, and therefore the site had "no local autonomy" apart from the employer's other sites. In *Budget Rent A Car Systems*, 337 NLRB 884 (2002), in similar contrast to the case here: the petitioned-for store had "no separate local

¹⁹ See *Renzetti's Markets*, 238 NLRB at 175 (goal of single-facility determination is in part to find whether employees are "under the immediate supervision of one who is involved in . . . affecting their job status").

management;" the branch manager had "little or no input into hiring, terminations, serious discipline, . . . transfers, . . . merit wage increases, or other terms and conditions of employment;" and unit employees themselves engaged in "a substantial degree of coordination and contact" due to a shared inventory of vehicles. In *National Telephone Co.*, 215 NLRB 176 (1974), unlike here, "hiring, wage increases, serious disciplinary measures, and transfer of employees" were the sole prerogative of divisional management. As stated above, I find that the Employer here vests facility-level management with the significant local autonomy not found in these cases. Finally, the case upon which the Employer primarily relies, *Acme Markets, Inc.*, 328 NLRB 1208 (1999), is inapt. There, no single-facility question was before the Board because "no party has proposed, or made an argument for, any other alternative unit that would be smaller than an employerwide unit." 328 NLRB at 1210, n. 10.

The Employer also suggests that the existence of two systems at the Bronx facility supports a finding that all the New York area systems should be included in the unit. It is a long-standing principle that the Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit, or the most appropriate unit. Rather, the Act requires only that the unit be an appropriate unit for the purposes of collective bargaining. The Board has also held that in determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994).

The record establishes that each of the two systems at the Bronx facility is overseen by a supervisor and a project manager, just as the systems in the other New York area facilities. Thus the question becomes whether the grouping of systems in the petitioned-for Bronx facility, a separate defined geographical area, is an appropriate unit; or whether, as proposed by the Employer, the geographical grouping must include the systems in the other New York area facilities.

Based on the facts of this case, and my conclusions set forth above with regard to the Employer's operations and supervisory autonomy, I find that the unit sought by the Petitioner is more akin to a geographical grouping of plants located within one larger facility (herein called the Bronx facility). Therefore, whether the systems at the Bronx facility are considered either a single-plant or a separate and distinct geographic grouping, the Employer has not established that the petitioned-for unit is inappropriate for collective bargaining.

In view of the foregoing, I find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

INCLUDED: all full-time and regular part-time installation and field technicians, employed at the Employer's facility located at 200 South 14th Avenue, Mount Vernon, New York.

EXCLUDED: All office clerical employees, guards, and supervisors as defined in the Act

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time²⁰ and place set forth in the notice of election²¹ to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed at the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such a strike, who have retained their status as strikers but have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.²² Those eligible shall vote whether or not they desire to be

²⁰ Pursuant to Section 101.21 (d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

²¹ The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20 (c) of the Board's Rules requires that an employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

²² In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **July 1, 2005**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

represented for collective bargaining purposes by Local 1430, International Brotherhood of Electrical Workers, AFL-CIO.²³

Dated at New York, New York
This 24th day of June 2005.

/s/ Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

²³ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **July 8, 2005**.